



493434

April 2, 2007

Richard Karl, Director  
Superfund Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Re: Allied Paper/Portage Creek/Kalamazoo River Superfund Site

Dear Mr. Karl:

I am writing on behalf of the citizens of the City of Kalamazoo, Michigan regarding Administrative Settlement Agreement And Order On Consent For Removal Action (the "Order") issued by U.S. EPA on February 21, 2007, permitting the placement of PCB-contaminated sediments from the Plainwell Impoundment Area into an existing, temporary facility at the Allied Paper Operable Unit #1 ("Allied Paper Landfill"). The Allied Paper Landfill is not only a Superfund Site and an unlicensed disposal area, but it is up gradient from the City's drinking water well field and situated in a low-income, primarily minority (African-American and Hispanic) neighborhood. The City was first informed of this Order after it was issued, and I can say that the response of our citizens and public officials has been nothing short of outrage.

**Summary of City's Position.** According to the February 2007 U.S. EPA Fact Sheet describing the work, "[s]ince November 2004, EPA has been involved in confidential discussions to resolve differences between the mediating parties that were delaying the cleanup and restoration of the Kalamazoo River site." Although it is understandable that settlement discussions occur behind closed doors, it is not acceptable for EPA to preclude the City from having an opportunity to provide comments on a plan to dispose of highly toxic PCB-contaminated sediments within the City limits. The method chosen by EPA to deprive the City of its right to comment – styling the removal as "time critical" – is particularly disturbing. The Order is not an emergency unilateral order but the end result of two-years of negotiations. Furthermore, the sediments that are the subject of the Order have been in the Kalamazoo River for more than 30 years and cannot possibly be construed as posing an emergency risk of migration, bio-uptake, or ingestion. By inappropriately characterizing this removal as time critical, EPA has subverted the Community

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Involvement Plan and foreclosed other opportunities for public comment and involvement. The City objects to being left out of the decision making process, it objects to imposing the burden of this cleanup on its low-income, minority citizens, and it objects to the PCB-contaminated sediments being placed in the unlicensed disposal area up gradient from a municipal wellfield.

**Discussion of City's Position.** Although EPA has agreed to meet with representatives of the City and MDEQ to discuss this situation, EPA has placed the City at an enormous disadvantage, forcing it to raise its concerns after the fact and in a short span of a few weeks before the work starts under the Order. The City has issued a FOIA request to EPA to review the Administrative Record for this Site, but EPA has not yet responded to that request. Moreover, the City has sought but still has not been provided with groundwater data that apparently has been collected in the vicinity of the Allied Paper Landfill. Once the City receives all of the pertinent data and reports, it will be able to provide more specific comments. Based on what it has seen thus far, the City raises the following concerns:

1. U.S. EPA Failed to Consider The Effects of Depositing the PCB-Contaminated Sediments Within The City Limits, Up gradient from a Municipal Well Field.

The City has seen nothing establishing that EPA considered the possible effects of placing PCB-contaminated sediments in an unlicensed disposal area up gradient from the City's well field. To the contrary, the City has learned that the Michigan Department of Environmental Quality ("MDEQ") Ground Water Quality Division was not consulted regarding the adverse effects the disposal of additional sediments in the Landfill may have on the quality of the City's municipal water supply. Indeed, MDEQ groundwater staff were only made aware of the issue because of concerns raised by the City.

Furthermore, the City has not seen any justification for selecting the Allied Paper Landfill as the disposal location for the PCB-laden sediments over other more appropriate disposal areas, such as a properly licensed TSCA landfill, or even the 12<sup>th</sup> Street Landfill, which is much closer to the Plainwell Impoundment and may not present the same well field risks or environmental justice issues present at the Allied Paper Landfill. Again, it is hard for the City to know what criteria EPA considered, if any, in selecting the Allied Paper Landfill because the City was completely left out of the decision-making process and has been forced to scramble to gather and analyze the Administrative Record and relevant site data and records.

2. There Is No Justification For Performing This Work As A Time Critical Removal Action.

According to the Order, the PRPs discharged PCBs into the Kalamazoo River from the mid-1950s to the early 1970s, i.e., more than 30 years ago. Negotiations between the U.S. EPA and the PRPs regarding this very removal action have lasted more than two years. Given all the time that has passed, it is inconceivable that U.S. EPA can justify performing this remedy as a time

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critical removal action, which severely limits the City's opportunity for review and comment. The City has little choice but to conclude that EPA allowed the removal to be done on a time-critical basis purely as a bargaining concession to the Respondents and to prevent meaningful involvement by the City.

The February 14, 2007 Enforcement Action Memorandum that purports to justify EPA's decision to perform a time critical removal action is lacking in several respects. EPA's justification seems to be based on the potential threat of exposure to human health and the environment, but there is no discussion of the adverse health effects the removal action itself might cause, such as the suspension of PCB-contaminated sediments in the Kalamazoo River, the eroding of PCB-contaminated sediments in Allied Paper Landfill, and the migration of PCBs into the City's well field. Indeed, some of the justifications offered in the Action Memorandum itself seemed less than robust. For example, page 5 of the Memorandum states that, "[t]he PRPs concluded, primarily through visual observation, that the riverbanks were a source of ongoing loading of exposed sediments (and therefore PCBs) to the river. The PRPs also identified, again primarily through visual observation, some of the mechanisms involved in such loading." Given the importance of these issues, it would seem that something more than visual observation would be called for in deciding whether the riverbanks provide a sufficient new load of PCBs to justify a time critical removal action. It seems that EPA drafted the Memorandum merely to justify a decision that had already been made rather than to make a decision based on the data. If the removal action was truly "time critical," U.S. EPA could have simply issued a Unilateral Administrative Order to the PRPs back in 2004.

### 3. U.S. EPA Completely Ignored Its Own Community Involvement Plan.

EPA published a Community Involvement Plan (the "Plan") in December 2006, i.e., during the same time period that it was holding confidential discussions with the PRPs to discuss proposals to remove sediments from the Plainwell Impoundment Area. Page 11 of the Plan notes that there are "[I]ots of trust issues" regarding the historical handling of the Kalamazoo River remediation. In order to address these trust issues, several important points were identified in the Community Involvement Section of the Plan, including:

- The need to ask the municipalities if they have a plan on how to answer their communities' questions about the site.
- The need to include minorities, including the African-American and Hispanic communities, in outreach activities.
- The approach to public involvement is important.
- The need to make strong efforts to work with communities.

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- The need to make decisions that are based on local conditions versus national conditions.

These elements of the Plan were completely ignored and circumvented in favor of pursuing an unjustified time-critical removal action, thereby undermining the City's ability to become involved in the decision-making process. Based on the reaction to the Order throughout the community, the "trust issues" in the City over the remediation of the site have only intensified.

4. It Is Not Clear that the Allied Paper Landfill Meets the Substantive Requirements of TSCA.

Because the Allied Paper Landfill is part of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site, a TSCA permit is not required for on-site disposal of PCBs. However, the substantive requirements of TSCA must still be met. Those requirements are described in 40 CFR § 761.75. Again, although EPA has placed the City at a severe information disadvantage, a review of the § 761.75 requirements raises some obvious questions:

- Are the area soils relatively impermeable, as required by § 761.75(b)(1)?
- Are synthetic membrane liners required and in place? (See § 761.75(b)(2).)
- Is the bottom of the landfill above the historical high groundwater table, as required by § 761.75(b)(3)?
- Is there a hydraulic connection between the landfill and any standing or flowing surface water, as prohibited by § 761.75(b)(3)?
- Does the landfill have appropriate monitoring wells and leachate collection, as required by § 761.75(b)(3)?

These are just some of the issues that need to be addressed before allowing more PCB-laden sediments to be disposed of at the Allied Paper Landfill. Indeed, the fact that the Allied Paper Landfill is itself a Superfund Site raises broader, equally important questions: What is being done to remediate and close the Allied Paper Landfill site? The disposal of PCB sediments from the Plainwell Impoundment Area is described as a "temporary" solution, but what is the permanent solution?

We hope that the foregoing helps EPA understand the depth and intensity of the City's concerns over the sudden issuance of this Order. The City appreciates EPA's willingness to meet with the City and MDEQ, but the City expects EPA to propose concrete actions that will allow the City a meaningful opportunity to provide comments and to consider those comments in good faith before any removal occurs.

(Richard Karl, Director  
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Sincerely,

Dr. Hannah J. McKinney  
Mayor, City of Kalamazoo

cc: Hon. Carl Levin  
Hon. Debbie Stabenow  
Hon. Fred Upton  
Hon. Jennifer M. Granholm  
Hon. Tom George  
Hon. Robert B. Jones  
Mary Gage, U.S. EPA  
Levester Spearman, U.S. EPA  
Steven E. Chester, MDEQ

MAY 8 2007 10:02AM

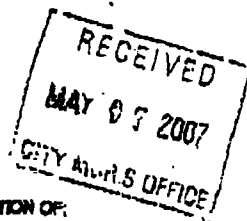
KALAMAZOO GAZETTE

NO. 1537



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

MAY 08 2007



REPLY TO THE ATTENTION OF:

S-6J

Dr. Hannah J. McKinney, Mayor  
City of Kalamazoo  
Office of the Mayor  
241 W. South Street  
Kalamazoo, Michigan 49007-4796

Dear Mayor McKinney:

Thank you for your April 2, 2007, letter regarding the planned Time-Critical Removal Action ("TCRA") at the former Plainwell Impoundment in the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site. In your letter, you specifically requested a response to the City's concerns outlined in your letter. The response to these questions can be found in the enclosure to this letter.

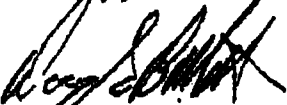
On April 25, 2007, the United States Environmental Protection Agency ("U.S. EPA") and the State of Michigan announced that Georgia-Pacific and Millennium Holdings had agreed not to send the PCB-contaminated material from the Plainwell Impoundment, to the Allied Paper Landfill ("Landfill") in 2007. Instead, material excavated during the 2007 construction season will be sent to permitted commercial landfills. This alternative disposal plan was proposed by the companies and agreed to by the U.S. EPA and the State of Michigan. No decision has been made regarding a disposal site or sites for material excavated during the 2008 construction season. However, U.S. EPA will solicit public input on future disposal plans before a final decision is made.

Although the disposal plan for 2007 has been revised, both U.S. EPA and the State of Michigan firmly believe the original plan to place Plainwell Impoundment materials at the Landfill is fully protective of human health and the environment and would have presented no negative impacts to the Kalamazoo community or the environment.

We are aware of the concerns of City of Kalamazoo officials and residents about disposal at the Landfill. We will ensure that the public is given an opportunity to provide input regarding disposal options for material removed in 2008. In the meantime, the time-critical cleanup work at the Plainwell Impoundment resumed on May 2, 2007.

Again, thank you for your letter. If you have any further questions, please contact me or Mr. Samuel Borica, the Superfund On-Scene Coordinator for this project at (312) 353-8360.

Sincerely yours,



for Richard C. Kari, Director  
Superfund Division

Enclosure

cc: Hon. Carl Levin  
Hon. Debbie Stabenow  
Hon. Fred Upton  
Hon. Jennifer M. Granholm  
Hon. Tom George  
Hon. Lorence Wenke  
Mike Cox, Michigan Attorney General  
Hon. Robert B. Jones  
Steven Chester, Director, MDEQ  
Jim Sygo, MDEQ  
Andy Hogarth, MDEQ  
Daria Devantier, MDEQ  
Paul Bucholtz, MDEQ

### Enclosure

As requested in your April 2, 2007 letter, the U.S. EPA responses to the specific concerns raised by the City are provided below.

**#1: U.S. EPA Failed To Consider The Effects of Depositing PCB-Contaminated Sediments Within The City Limits. Ungradient From A Municipal Well Field.** Groundwater monitoring has been occurring at the Landfill for a number of years. A key objective of the monitoring program has been to gather information on groundwater flow direction and the quality of the groundwater. There are 103 sample points (which are measured monthly) used for determining groundwater flow directions and 57 monitoring wells for evaluating groundwater quality at the site. U.S. EPA evaluated this information and concluded that there is no reason to believe there is any threat of contamination to the City of Kalamazoo's drinking water supply wells from the Landfill. Based on all available data, groundwater does not travel toward the City of Kalamazoo's drinking water supply wells. Instead, all of the groundwater flow information gathered to date indicates that groundwater underneath the Landfill travels toward and discharges to Portage Creek.

The majority of the Landfill has a groundwater collection system along Portage Creek in front of a sheet pile wall. Groundwater that is collected by this system is treated with carbon prior to discharging to the City of Kalamazoo's waste water treatment plant. No PCBs have been detected coming out of the groundwater capture zone and no PCBs have been detected after carbon treatment prior to discharging to the City of Kalamazoo's waste water treatment plant.

Although groundwater monitoring was conducted at the Landfill for over 10 years, the Potentially Responsible Parties ("PRPs") will collect additional groundwater samples in an effort to update the existing groundwater data. U.S. EPA and the State have a thorough understanding of groundwater conditions at the site and do not expect to see any significant differences between the existing and updated groundwater data. Generally, PCBs are not soluble and do not readily mobilize into groundwater, as evidenced by groundwater data collected and analyzed at the Allied Paper Landfill and the other on-site landfills.

**#2: There Is No Justification For Performing This Work As A Time Critical Removal Action.** The factors that U.S. EPA must consider when determining whether to initiate a TCRA are set forth at 40 C.F.R. § 300.415(b)(2). A TCRA is typically conducted when less than six months exist before on-site removal activity must begin. Based on a variety of data and information, U.S. EPA determined that it was necessary to conduct a TCRA at the Plainwell Impoundment. The data and information that U.S. EPA considered to make this determination includes:

- new data collected in 2006, which confirmed the presence of PCBs with concentrations > 50 parts per million ("ppm") with a maximum concentration of 220 ppm, in three localized hot spots in the river sediments;



- previously collected data that indicated that bank soils and floodplains contained areas with PCB concentrations > 50 ppm;
- information that demonstrated significant uncontrolled erosion is occurring at the Plainwell Impoundment that causes undercutting of contaminated banks which then fall into the river and contribute to sediment contamination; and
- the fact that the Plainwell Impoundment is the first, most upstream significant source of PCBs to the Kalamazoo River, and it is important to remove this material from the river as soon as possible to eliminate the most upstream source of PCBs to the River.

The 2006 data regarding mid-channel hot spots raised serious concerns at U.S. EPA and the Michigan Department of Environmental Quality. Before 2006, the PRPs had collected in-stream sediment data along "transects," i.e. in a straight line from one river bank to another. Until 2006, PCB concentrations in mid-stream sediments appeared to be relatively and uniformly low. The new data indicated that there were "hot spots" of high PCB concentrations between the transects. During the settlement negotiations, the PRPs agreed to conduct the TCRA at the Plainwell Impoundment. Additionally, the PRPs agreed to evaluate whether performance of the removal action would be facilitated by removal of the Plainwell Dam. The Plainwell Dam is in poor condition, and the Michigan Department of Natural Resources, a party to the negotiations, is currently under an order to repair, replace or remove the dam, and prevent access by unauthorized persons. The agreement among Millennium Holdings, LLC, Georgia-Pacific, LLC, U.S. EPA and the State of Michigan was captured in a legal document called an Administrative Settlement Agreement and Order on Consent. U.S. EPA and the PRPs held settlement negotiations to reach the agreement, and the public does not participate in U.S. EPA's settlement negotiations.

U.S. EPA's regulations at 40 C.F.R. § 300.415(g) explain how U.S. EPA should interact with the community when a removal action is taken. U.S. EPA is following the requirements of the regulations and is committed to meeting with public officials and citizens to listen to concerns and respond appropriately. U.S. EPA will also solicit public input before a final decision is made regarding disposal options for material removed from the Plainwell Impoundment in 2008. Additionally, the public will have an opportunity to comment on the final cleanup action for the Allied Paper Landfill, as well as final cleanup decisions for other areas of the River, through the Superfund remedy selection process. U.S. EPA will not conduct TCRAs at the Kalamazoo River Superfund Site in the future unless there is data and information that supports a need to take another TCRA.

**#3: U.S. EPA Completely Ignored Its Own Community Involvement Plan.**

U.S. EPA could have done a better job communicating with City of Kalamazoo officials and residents at the time U.S. EPA announced the outcome of the settlement negotiations including the decision to conduct a TCRA. Due to the nature of the negotiations, U.S. EPA was unable to seek public input or share the details of the settlement agreements any sooner than we could. U.S. EPA understands the frustration this has caused City of Kalamazoo officials and residents about not being part of the decision making process. Although the disposal plan in 2007 has been revised, U.S. EPA will ensure that the public is given an opportunity to provide input regarding disposal options for material removed in 2008.

Additionally, the public will have an opportunity to provide input before U.S. EPA makes a final cleanup decision at the Allied Paper Landfill, as well as for cleanup decisions at other areas of the River, through the Superfund remedy selection process. A final cleanup decision for the Landfill will be made in a Record of Decision ("ROD") after the Remedial Investigation/Feasibility Study ("RI/FS") Report is finalized and after U.S. EPA makes the Proposed Plan for cleanup available for public comment. U.S. EPA will consider all public comments before a final or "permanent" cleanup decision is made for the Allied Paper Landfill. The U.S. EPA is currently reviewing the RI Report for the Allied Paper Landfill, which was drafted by the State of Michigan. After the RI is finalized, the FRPs will draft the FS Report for U.S. EPA review and approval. U.S. EPA will then follow the process discussed above before U.S. EPA makes a final cleanup decision for the Landfill.

Recent community involvement activities include U.S. EPA participation in meetings with the Edison Neighborhood Association and the Kalamazoo Neighborhood Coalition. We are working with other neighborhood associations to meet with them at their convenience.

**#4: It Is Not Clear that the Allied Paper Landfill Meets the Substantive Requirements of TSCA.** When U.S. EPA conducts a response action at a Superfund site, it is required to evaluate federal and state regulations and standards that are applicable or relevant and appropriate requirements ("ARARs") to the cleanup action. The need to achieve or waive ARARs, however, differs for remedial actions and removal actions. Remedial actions must attain or waive ARARs. See 40 C.F.R. § 300.430(e)(9)(iii)(B). Removal actions must attain ARARs to the "extent practicable considering the exigencies of the situation...." See 40 C.F.R. § 300.415(i).

The TSCA chemical landfill requirements of 40 C.F.R. § 761.75 are not an ARAR for any response action at the Kalamazoo River Superfund Site. In 1999, U.S. EPA promulgated the PCB Remediation Waste Rule to address, in part, the disposal of large quantities of dredged material containing PCBs over 50 ppm. The new regulations regarding the disposal of PCB Remediation Waste are found at 40 C.F.R. § 761.61. This regulation creates a mechanism by which U.S. EPA may issue a risk-based disposal approval for PCB Remediation Wastes if it determines that the proposed disposal method does not pose an unreasonable risk of injury to health or the environment. The authority

to issue a risk-based disposal approval has been delegated from the U.S. EPA Region 5 Regional Administrator to the Director of the Superfund Division, subject to a requirement for the Director of the Superfund Division to consult with the Waste, Pesticides & Toxics Division. U.S. EPA Region 5 Superfund Division has procedures in place that it follows to consult with the Waste, Pesticides & Toxics Division when it considers whether to approve risk-based disposal of PCB Remediation Waste.

When U.S. EPA finalizes the Feasibility Study for the Allied Paper Landfill, it will identify 40 C.F.R. § 761.61(c) as an ARAR for the remedial action. The permanent remedy for the landfill will need to comply with the TSCA ARAR. U.S. EPA has already issued risk-based disposal approval for permanent disposal (i.e. consolidation and capping) of PCB wastes at the 12<sup>th</sup> Street and the A-Site Landfills, and for the disposal of a portion of the Bryant Mill Pond PCB residuals in the Allied Paper Landfill.

**#5: According to paragraph 21.d. of the Administrative Settlement Agreement and Order of Consent for the Removal Action, the Respondents shall only send hazardous substances, pollutants, or contaminants from the Plainwell Impoundment Area to an off-site facility that complies with the requirements of the statutory provision and regulation cited under this paragraph. For purposes of the Agreement, the Allied Operable Unit is not considered an "off-site" location. How can these types of regulations be waived when PCB sediments are being trucked into a dense urban neighborhood? Why would they be waived?** The provisions and regulations cited under Paragraph 21.d. of the AOC are specific to materials that will be sent to an off-site waste management facility for disposal. The Allied Paper Landfill is one of four landfills that are part of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site. These landfills are considered "on-site" landfills and therefore, are not subject to the specific provisions and regulations under Section 21 d. of the AOC. Before U.S. EPA can dispose materials at an on-site landfill such as the Allied Paper Landfill, U.S. EPA must make the determination that disposal of the materials does not present a threat to public health or the environment. Before the 2007 disposal plan was changed to the use of off-site permitted commercial facilities, U.S. EPA had already made the determination that disposal of the Plainwell Impoundment materials at the Allied Paper Landfill would not present a threat to public health or the environment.

**#6: What is being done to remediate and close the Allied Paper Landfill? The disposal of PCB sediments from the Plainwell Impoundment Area is described as a "temporary" solution, but what is the permanent solution?** The final or permanent cleanup decision at the Allied Paper Landfill has not yet been made. This Landfill is in the Remedial Investigation stage of the Superfund cleanup process. Under this process, an investigation of the nature and extent of contamination is conducted and cleanup options evaluated to address contamination present at the landfill. Results of the investigation and evaluation of cleanup options are presented in the RI/FS Report. U.S. EPA is currently reviewing the RI Report, which was drafted by the State of Michigan. After the RI is finalized, the PRPs will draft the Feasibility Study Report for U.S. EPA review and approval. After the RI/FS is finalized, U.S. EPA will follow the process

discussed in U.S. Response to Item #3 before U.S. EPA makes a final cleanup decision at the Landfill.

DEBBIE STABENOW  
MICHIGAN

COMMITTEE:  
AGRICULTURE, NUTRITION, AND FORESTRY  
BUDGET  
FINANCE

## United States Senate

WASHINGTON, DC 20510-2204

Ms. Mary Gade  
Regional Administrator  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Dear Administrator Gade,

I am writing regarding the U.S. Environmental Protection Agency's recent decision to dispose of 132,000 cubic yards of sediment from the Kalamazoo River Superfund site at the Allied Paper Landfill in Kalamazoo, MI.

I have been working closely with the EPA, the City of Kalamazoo and the community to address the questions that have been raised and appreciate your agency responding to my request to hold a meeting with the City of Kalamazoo regarding this matter.

While I am pleased to see plans move forward to remove contaminants from the Kalamazoo River, I continue to receive a number of troubling questions from the community regarding the disposal site. It is my understanding that the PCB-contaminated sediments have concentrations of 200 parts per million (ppm), and the site where the sediments are to be disposed of, the Allied Paper Landfill, is not permitted by federal regulations to handle wastes with this concentration of PCBs. As you are aware, this disposal site is inside the Kalamazoo City limits and between two neighborhoods. There are grave concerns regarding the safety of the entire community, especially for the children, families, and seniors who live next to this planned disposal site.

I am specifically asking the EPA to respond to the community's questions regarding this disposal plan:

- 1) Will the future disposal and containment of the PCBs at the Allied Paper Landfill be safe for the surrounding public? What are the risks and the degree of safety?
- 2) What environmental studies and legal processes have been completed to determine whether the intended future use of the Allied Paper Landfill will allow for safe disposal and containment of the PCBs? Will the degree of safety and risks be explained to the public? Are these studies and processes a part of a public record and available for public review?
- 4) What measures will the EPA take to contain the PCBs within the landfill and to prevent the PCBs from migrating to the city's water supply and Portage Creek?

5) What monitoring system will EPA use to ensure that the contaminants are not migrating from the landfill, and to ensure that the city's water supply is safe? If there is a monitoring system, what will the duration of it be?

5) Is the disposal of the contaminants at the Allied Paper Landfill a temporary measure, and if so, how many months/years will the sediments remain in the landfill? What are the criteria to determine if it is temporary or permanent? In 1999, contaminated waste from Bryant Mill Pond was also "temporarily" disposed of at the Allied Paper Landfill site; however, this waste still remains in the landfill today. What are the plans for that?

6) What is EPA's timeframe for additional cleanup of the rest of the river sections?

7) I understand that some safety precautions will be used to wash the trucks and roads. What procedures will be used to protect the community from the actual plume that comes from the dust when the materials are dumped from the trucks? How will the outside property (toys, barbecues, vehicles, etc.) of nearby families be protected? Also, are there measures to ensure that children cannot enter the disposal site?

Due to the critical nature of this matter, I look forward to hearing from you soon. I feel strongly that the Kalamazoo community deserves full protection of their health and welfare and that these questions be satisfactorily addressed before any disposal action is taken.

Thank you for your attention to this serious matter. If you need further information, you may contact my staff, Mary Judnich (Grand Rapids office 616-975-0052) or Chris Adamo (Washington D.C. office 202-224-2683) regarding this matter.

Sincerely,

A handwritten signature in black ink, reading "Debbie Steneau". The signature is written in a cursive, flowing style. The first name "Debbie" is written with a large, looped 'D'. The last name "Steneau" is written with a large, looped 'S' and a trailing flourish.



**OFFICE OF THE CITY MANAGER**

241 W. South Street  
Kalamazoo, MI 49007-4796  
Ph. 269.337.8047  
Fx. 269.337.8162

April 18, 2007

Mr. Steven Chester, Director  
Michigan Department of Environmental Quality  
Constitution Hall  
525 W. Allegan Street  
Lansing, Michigan 48913

Dear Mr. Chester:

This letter and its attachment shall supplement the separate correspondence from the Mayor of Kalamazoo that was presented to you at today's meeting. The attachment to this letter includes additional issues and information requests of a more technical nature. These items have been generated from Public Services staff's review of groundwater and surface water monitoring data, soil profile mapping and EPA's 'Design Report' for the sediment removal from the Plainwell Impoundment and proposed disposal to the former Allied Paper site.

In the very brief amount of time that staff has had to review the data, drawings and reports, some informational gaps have been identified. Subsequent to a response to these technical issues, Public Services staff anticipates that they might have the opportunity to discuss some of these technical issues with applicable MDEQ staff in the near future.

From a general perspective, the City of Kalamazoo is requesting additional information pertaining to more recent site monitoring data, monitoring well construction documentation, interpretation of soil profile diagrams, site geotechnical data, and a number of questions concerning the Superfund process as it has been applied to the Allied Paper site.

The City of Kalamazoo maintains its position that use of the former Allied Paper site presents a long-term health risk to the public water supply system. The data provided to the City to date and reviewed by staff does not demonstrate that the proposed disposal site would provide adequate protection to the aquifers and surface waters in the area. Based on our own collective experience, we can only assume that with enough time, pumping stress, and potential "forced" migration of contaminants with the additional overburden pressure, it is reasonable to expect migration of contaminants off-site and into an area of likely downward potential further within the City's zone of capture for its well fields.

We appreciated the opportunity to meet with you today to discuss the wide-range of issues and concerns that the City has regarding the transportation, disposal and long-term use of the Allied Paper site as the repository for contaminated sediment from the Kalamazoo River. We look forward to meeting with MDEQ staff to discuss these items in detail.

Sincerely,

A handwritten signature in black ink, appearing to read "K. P. Collard", with a stylized flourish at the end.

Kenneth P. Collard, ICMA-CM, P.E.  
City Manager

attachment



**Allied Paper, Inc./Portage Creek/Kalamazoo River  
Superfund Site  
Technical Review Comments**

April 17, 2007

**Item A:**

The Allied Disposal Site (OU 01) is located within the 5-Year Time-of-Travel Capture Zone of the MDEQ-approved Well Head Protection Program (WHPP) for the City of Kalamazoo's Water Pumping Stations/Wellfields 1, 2, 3, 4 and 7, which have the capacity to provide approximately one-half of the annual average day demand of the City's Public Water Supply System.

**Comments:**

1. What scientific information, such as groundwater modeling, particularly reflecting multiple area well field operation, was used to support EPA's/MDEQ's position that the disposal site poses no long term adverse risk to the groundwater? Locating such a disposal site appears to be contrary to the purpose of the WHPP to minimize risk to groundwater-based public water supply systems.
2. The City's review of the cross sections provided by MDEQ indicate the heterogeneous nature of the underlying material which consists of fill, residuals, various mixtures of sands and gravels, peat, till, silt and clays at highly variable thicknesses. Clay is non-existent in some portions of the proposed disposal area. These conditions do not provide adequate protection of the groundwater from vertical or horizontal migration of contaminants. It is unreasonable to expect that since some portions of the overburden within the proposed disposal area seemingly have protective characteristics (i.e. lower hydraulic conductivity, etc.) that the whole site has the same. As a matter of fact, the cross-sections show the contrary.
3. What would the overburden pressure of an additional ~40 feet of sediment have on the existing hydraulics of the site? For example, Figure 4-4J indicates several existing seeps that have detectable levels of PCB contaminants with one exceeding screening criteria. Why weren't the seep samples analyzed for other parameters of concern, such as metals (Arsenic in particular)? It would be reasonable to expect the significant additional loading on the existing material would create additional seeps, some of which would likely be west of the site away from Portage Creek (and its influence on localized groundwater discharge of the upper aquifer) and further into the heart of the wellfields' capture zone.
4. According to Figure 27 "Water Table Contour Map June 19, 2003" and Figure 28 "Piezometric Surface of the Upper Sand Unit June 19, 2003, much of the groundwater flow information within for the proposed Western Disposal Area is inferred due to sparse data. A prerequisite to any site evaluation - especially a disposal site - depends upon sound scientific data that consists of a representative horizontal and vertical sampling grid, an analytical set that represents all parameters of concern based on historic known contamination and those that represent a reasonable component of relative higher potential risk, and a water level collection

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network that provides an adequate data set to represent horizontal and vertical flow regimes. There is an inadequate amount of any of this data to reasonably infer current flow regimes at various locations and at depths.

5. Hydraulic conditions at the Western Disposal Site would significantly be modified to an undetermined level in undetermined ways by the additional disposal of 132,000 cubic yards of sediment. These unknowns present an unreasonable and unjustified environmental and public health risk given the nature of the proposed action and associated time-frame.
6. What co-contaminants, other than PCBs, are currently present at the site and at what concentrations? What additional contaminants will be present in the contaminated sediment from the Plainwell Impoundment Area? What ongoing monitoring plans are in place to assess these other contaminants and potential impacts on groundwater and public health? What current data on these other contaminants is currently available?
7. To what degree has EPA/MDEQ studied the fate in transport of PCBs and other co-contaminants on this site? Of particular concern are other contaminants, such as heavy metals, including mercury and arsenic, which are considerably more mobile than PCB. Have monitoring programs been developed to account for and track any of the degradation products for co-contaminants?
8. It is understood that the Allied Disposal site has a number of groundwater monitoring wells. It also understood that there has been some surface water sampling of Portage Creek subsequent to the 1998 removal action. However, even though some data has been provided, the most recent groundwater monitoring event was 2003.
  - Why haven't monitoring wells been sampled since?
  - What is the future groundwater and surface water sampling schedule?
  - And what parameters will be monitored?
  - Will additional monitoring wells be installed?
  - The City requests that MDEQ forward for the City's review any and all monitoring data for this site, including groundwater monitoring data more recent than 2003, surface water monitoring data, air monitoring data, and soil boring data.
9. What are the construction details for the OU-1 monitoring wells? What is the total number of monitoring wells? What was the construction methods used for well construction? What are the screened intervals? Is each of the water bearing formations monitored, in particular, the formation where City of Kalamazoo drinking water production wells have been completed?

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10. What response actions will be taken should PCBs, co-contaminants and/or degradation products be detected in groundwater samples? What contingency plans will be in place to assure the City of Kalamazoo that groundwater contamination will be controlled should it be detected in down gradient monitoring well samples.
11. The Safe Drinking Water Act Wellhead Protection Program is a MDEQ-implemented initiative intended to protect wells and groundwater recharge areas that supply public drinking water systems. Therefore, the City insists that the elements of this program should be ARARs for the yet to be completed RI/FS for OU 1 and, furthermore, due to possible impact to a municipal wellfield, three dimensional groundwater modeling be used to more accurately evaluate the risk to the water supply.

**Item B:**

The apparent misapplication by EPA of the Time-Critical Removal Action (TCRA) process appears to have been used to obtain a legal agreement to address the contamination associated with the Plainwell Impoundment without conducting community outreach and communication.

**Comments:**

1. From EPA's guidance, "Time-critical removals are situations where EPA must begin cleanup activities within six months of discovery of hazardous materials to protect public health and safety. Examples include removal of drums or small volumes of contaminated soil and stabilization of lagoons. Where non-Time Critical removals respond to releases where a planning period of at least six months is available before onsite activities must begin and the need is less immediate. According to the Order, the PRPs discharged PCBs into the Kalamazoo River from the mid-1950s to the early 1970s, i.e., more than 30 years ago. For this reason alone, EPA has not justified why this work must be done as a TCRA.
2. Why did not the EPA follow its own guidance entitled, "*Superfund Community Involvement Handbook*", EPA 540-K-05-003? A TCRA must still meet many of the public communication and outreach policies and procedures outline in the guidance, yet there was no effort on behalf of either MDEQ or EPA to communicate to the individuals and organizations that would be impacted by this removal. It appears that the public communication effort was focused on the Plainwell area, while no consideration was given to the City of Kalamazoo. The City of Kalamazoo was clearly not included in the Communication Strategy.

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**Item C:**

**MDEQ/EPA has stated that the use of the Allied Disposal area as the repository of PCB contaminated sediment is protective of human health and the environment because the permeability (hydraulic conductivity) of the paper mill residuals and soils on the site provides an effective barrier due to the low permeability of this material. An estimate of the permeability of the residuals in the Former Residual Dewatering Lagoons 1, 2, 3, 4, and 5, and the Bryant Historic Residual Dewatering Lagoon of the Allied Operational Unit using the data collected during consolidation testing was performed in 2002.**

**Comments:**

1. How could MDEQ/EPA approve the use of a waste as a landfill cell liner? Would MDEQ approve a similar landfill liner if proposed by a private company or governmental agency?
2. From the brief amount of information submitted by EPA, it appears that eight sample locations were selected from the above areas previously used for disposal. These sample locations may not be representative of the near surface conditions in the Western Disposal Area, particularly after the sediment has been piled to a height of 40 feet.
3. What permeability testing was conducted in the Western Disposal Area?
4. Were samples collected and laboratory compacted? Since there was no ASTM reference for the permeability testing, what procedures were followed to assure that the samples tested were representative of the in-field conditions?
5. From the information submitted, it is not clear what testing methods were used. Were the tests performed on recovered samples or was it done in-situ? It would be helpful to submit the applicable QA/QC procedures for the test so that it could be further evaluated. Normally, the Falling-Head or Constant-Head laboratory test is used to determine permeability. To generate even more credible data, results from laboratory permeability testing should be validated to assess the saturated hydraulic conductivity of the compacted soil by field tests using the sealed double ring infiltrometer testing method at several locations across the disposal area. This test is commonly used in permeability testing for compacted clay soils used in landfill construction. The City's concern is that the estimate of permeability has been overestimated, particularly if the tests were run in unsaturated condition, and may not be representative of actual field permeability.
6. It is our understanding that EPA has recently started clearing the Allied Paper site of trees. Some of the trees are rather significant in size with substantial root systems

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that could potentially have damaged the residuals layer(s) the regulatory agencies believe will protect the groundwater under the waste. Will in field hydraulic conductivity be conducted in areas where trees are being removed?

**Item D:**

**In order for the Allied Paper Operable Unit to be used as a permanent disposal site for the PCB contaminated sediment, the disposal site must meet the technical requirements of 40 CFR 761.75(b) or the EPA Regional Administrator may approve disposal by issuing a waiver for some of the technical requirements.**

**Comments:**

1. Since the Allied Paper Operable Unit (OU 1) does not completely meet the technical requirements of a Chemical Waste Landfill pursuant to 40 CFR 761.75(b), a waiver must be issued by the EPA Regional Administrator. The City of Kalamazoo is opposed to the issuance of the required TSCA waiver if the final remedy for the Site allows leaving the contaminated soils in place.
2. Apparently, two Kalamazoo River Superfund Operating Units (Willow Blvd-A Site and King Highway Landfill) have already received TSCA waivers. A comparison between these two sites and the Allied Paper Operating Unit is not appropriate since OU 1 differs significantly from those Operating Units. First OU 1 is located within a defined Wellhead Protection Zone (Five year time of travel zone) and within a densely populated residential area. The other operating units are located in industrial areas and outside wellhead protection capture zones.
3. Furthermore, the City has not seen any justification for selecting the Allied Paper Landfill as the disposal location for the PCB-laden sediments over other more appropriate disposal areas, such as a properly licensed TSCA landfill, or even the 12<sup>th</sup> Street Landfill, which is much closer to the Plainwell Impoundment and may not present the same well field risks or environmental justice issues present at the Allied Paper Landfill.
4. Why wasn't the use of a MDEQ permitted, Type II Landfill considered for disposal of PCB-contaminated sediment with PCB concentrations < 50 ppm? This option would provide for the disposal of this contaminated sediment in a true landfill which was designed with engineering controls to minimize risk to human health and the environment. This approach is allowed under TSCA and has been used at other Superfund sites. Sediment with PCB concentrations > 50 ppm would go to a TSCA chemical waste landfill cell.

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**Item E:**

EPA/MDEQ has characterized the planned deposition on the Allied Paper Operable Unit 1 (OU 1) of contaminated soils from the Plainwell Impoundment as "temporary," with no assurance as to how long it will be before a "permanent" remedy is proposed and approved.

**Comments:**

1. The City of Kalamazoo is opposed to further using this "temporary" disposal location for the disposal of an additional 132,000 cubic yards of contaminated sediment (est. 4,400 pounds of PCB) from the Plainwell Impoundment Area. The City of Kalamazoo has been previously told by EPA/MDEQ that this disposal area is "temporary". From June 1998 to October 1999, approximately 150,000 cubic yards of PCB contaminated (est. 21,000 pounds of PCBs) sediment was moved into a "temporary" storage location. This material was placed into the Bryant Historical and Former Dewatering Lagoons and EPA/MDEQ defined this as "temporary"; it is now likely that the contaminated sediment will remain at the Allied site indefinitely.
2. It seems unlikely that areas designated as dewatering lagoons would be a suitable location for the final disposal of nearly 300,000 cubic yards of contaminated sediment.
3. It is understood that the Remedial Investigation Report for OU-1 has been submitted to EPA. With the completion of the Feasibility Study and the subsequent Record of Decision to be completed at some future date, it appears a significant amount of time could pass prior to knowing what remedial action would be taken on the disposal site. Apparently, there is no timeline in place for the completion these documents, so it's possible to conclude from this that the agencies would like to consider use of the Allied Disposal site for the future repository of additional PCB-contaminated sediment from the additional downstream segments of the Kalamazoo River.
4. It appears that EPA/MDEQ is conducting this disposal of offsite sediment contrary to the intent and purpose of the CERCLA regulations. In essence, EPA/MDEQ is allowing the disposal of 4,400 additional pounds of PCB onto a site for which a Remedial Investigation/ Feasibility Study has not been completed and the Record of Decision has not been issued. Since these documents assure that the process of identifying contaminants, assessing risk, and selecting an option, how can EPA, in good conscience, move ahead with disposal?
5. The City of Kalamazoo has devoted considerable state and local resources to generate redevelopment plans for this area of the City. These plans have been predicated on

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the City's acceptance of the "temporary" disposition of the contaminated soils from the 1999 Time Critical Removal Action and our expectation that all of the contaminated soils would eventually be removed from the Site. Our future economic growth is based, at least in part, on successful redevelopment of that area.

6. What will be the financial assurance measures to be in place to assure funds will be there to do necessary site maintenance, monitoring, and corrective action, if needed.

**Item F:**

**The lack of community involvement and participation in EPA and MDEQ decisions regarding the Allied Paper Site is outrageous. The City residents and public officials should have been consulted. For this Superfund site, EPA's outreach effort to keep the impacted stakeholders informed has been woefully lacking in comparison with other similar Superfund sites.**

**Comments:**

1. The Lower Fox River Superfund Site Basis of Design Report (BODR) indicates that during the process of identifying appropriate sites for staging, dewatering, transportation and disposal, that final selection and design will require stakeholder outreach activities to determine social and political acceptance of the proposed alternatives. Examples of these activities were further described in the BODR as discussions with area officials, regulatory agencies and continued work group meetings with the appropriate governmental participants.

There has been no attempt to duplicate this public and governmental unit outreach effort for the impacted stakeholders at the Allied Disposal site (OU-1).

2. With the exception of the meetings held over the past two weeks, why was the last meeting that had anything to do with the Allied Site held on May 29, 2003? (Appendix B, *The USEPA Community Involvement Plan*).
3. Since this site has direct impact on City of Kalamazoo residential and commercial development, we request that City of Kalamazoo staff be allowed to review pertinent data and have an opportunity to review draft reports such as the Remedial Investigation/Feasibility Study, Record of Decision, etc.

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**Item G:**

**The City has comments regarding the 'Former Plainwell Impoundment Time-Critical Removal Action Design Report', February, 2007.**

**Comments:**

1. Why was there no consideration of alternative dewatering and/or disposal methods, such as those to be implemented in the Lower Fox River Wisconsin Superfund Site, which also addresses PCB contaminated sediment? At this site the following were implemented:
  - a. Mechanical dewatering in lieu of passive dewatering to ensure that sufficiently high solids contents are achieved for disposal
  - b. Disposal of PCB sediment at concentrations <50ppm at a state-permitted type II landfill
  - c. Disposal of sediment at PCB concentrations >50 PPM at an engineered, TSCA permitted landfill (EQ Landfill, Belleville, Michigan).
2. With the potential for volatilization and offsite transport, what provisions will be in place to conduct air monitoring and sampling for fugitive dust leaving the site as trucks drive on and off the site and while sediment disposal is taking place? The disposal site is located within a rather heavily populated residential and commercial area. An air monitoring plan (as part of a Health and Safety Plan) would provide for such monitoring. There is no indication that one has been prepared for this site.